



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OAR-2013-0747; FRL-9903-35-OAR]**

**Notice of Receipt of Petitions for a Waiver of the Renewable Fuel Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a number of petitions for a waiver of the renewable fuel standards that would apply in 2014. The American Petroleum Institute (API) and the American Fuel & Petrochemical Manufacturers (AFPM) submitted a joint petition to the Administrator, dated August 13, 2013, on behalf of their members requesting a partial waiver of the 2014 applicable volumes under the RFS. Subsequently, several refining companies submitted individual petitions to the Administrator that also request a waiver of the 2014 applicable volumes. Section 211(o)(7)(A) of the Clean Air Act allows the Administrator of the EPA to waive the national volume requirements of the renewable fuel standard program in whole or in part if the Administrator determines that implementation of those requirements would severely harm the economy or environment of a State, a region, or the United States, or that there is inadequate domestic supply. EPA is inviting comment on all issues relevant to the petitions for a waiver that have been submitted. Comments submitted in response to a related Federal Register notice proposing the 2014 volume requirements will be considered to also have been submitted to the docket for this notice.

**Dates:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2013-0747, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- E-mail: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2013-0479, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments on the petitions for a waiver of the 2014 volume requirements to Docket ID No. EPA-HQ-OAR-2013-0747. Comments submitted in response to a related Federal Register notice proposing the 2014 volume requirements, docket EPA-HQ-OAR-2013-0479, will be considered to also have been submitted to Docket ID No. EPA-HQ-OAR-2013-0747. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through

www.regulations.gov or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** David Korotney, Office of Transportation and Air Quality, Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105; telephone number: (734) 214-4507; fax number: (734) 214-4050; email address: korotney.david@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. How Can I Access the Docket and/or Submit Comments?**

EPA has established a public docket for this Notice under Docket ID No. EPA-HQ-OAR-2013-0747 which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the EPA/DC Docket Center Public Reading Room, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Air and Radiation Docket is 202-566-1742.

Use [www.regulations.gov](http://www.regulations.gov) to obtain a copy of the waiver requests, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the docket ID number identified in this document.

## **II. Background**

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the Energy Policy Act of 2005 (EPAct), which added a renewable fuel program to the Clean Air Act (CAA, or “Act”). The statutory provisions for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), and EPA published revised regulatory requirements on March 26, 2010 (75 FR 14670). The transition from the requirements of EPAct to the requirements of EISA generally occurred on July 1, 2010.

EISA establishes annual “applicable volumes” for four categories of renewable fuel: cellulosic biofuel, biomass based diesel, advanced biofuel, and total renewable fuel. The statute specifies increasing applicable volumes through 2022 for all fuel types except biomass-based diesel, for which applicable volumes are specified through 2012. For years after those specified in the statute, EPA is to establish the applicable volumes after consideration of specified factors. The statute requires that EPA annually establish percentage standards that will ensure that required annual volumes of renewable fuels are used. However, EISA also provides the Administrator with authority to waive the applicable volumes of renewable fuels in appropriate circumstances.

The required volumes and associated percentage standards under the RFS program for the 2014 compliance year are being proposed in a related Federal Register notice. Under the RFS program, obligated parties, typically gasoline or diesel refiners or importers, are required to meet annual percentage standards to be in compliance. EPA sets these percentages, called the RFS percentage standards or RFS standards.

Renewable identification numbers, or RINs, are assigned by renewable fuel producers to each gallon of qualifying renewable fuel that they produce, and serve as a means for demonstrating compliance by the obligated parties. RINs can be acquired by obligated parties who purchase renewable fuel with assigned RINs, or they can be purchased by obligated parties from other parties who have accumulated more RINs than necessary for their own compliance. Aside from using current-year RINs to demonstrate compliance in a given year, obligated parties may also choose (a) to use available RINs from the prior

year towards the current year's requirement, up to a 20 percent cap, and/or (b) to carry forward a compliance deficit that can be satisfied in the next compliance year.

Section 211(o)(7)(A) of the Act allows the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to waive the national volume requirements of the RFS, in whole or in part, upon petition by one or more States, or by any party subject to the requirements of the RFS program. The Administrator may also waive the volume requirements on her own motion. A waiver may be issued if the Administrator determines, after public notice and opportunity for comment, that implementation of the RFS volume requirement would severely harm the economy or environment of a State, a region, or the United States, or that there is an inadequate domestic supply. If a waiver is granted, it can last no longer than one year but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

### **III. What is today's action?**

The American Petroleum Institute (API) and the American Fuel & Petrochemical Manufacturers (AFPM) submitted a petition to the Administrator, dated August 13, 2013, on behalf of their members requesting a partial waiver of the 2014 applicable volumes under the RFS. Subsequently, several refining companies submitted individual petitions to the Administrator that also request a waiver of the 2014 applicable volumes; nearly all of the petitions from individual companies incorporate the API/AFPM petition by reference. All of the petition letters are available in the docket, and any additional similar requests submitted to EPA

will also be docketed and considered together with requests already received. EPA is seeking comment on the petitions for a waiver of the 2014 renewable fuel standard and matters relevant to EPA's consideration of those petitions.

The petitions generally argue that there is an inadequate domestic supply of renewable fuel and therefore RINs for 2014, due both to ethanol "blendwall" constraints and limitations on the production of non-ethanol fuels like biodiesel. Petitioners argue that this inadequate supply of renewable fuel (and RINs) will lead to an inadequate supply of gasoline and diesel, because refiners and importers, faced with a shortage of RINs, will reduce their production of gasoline and diesel for the domestic market. Petitioners argue that this will in turn severely harm the economy based on increased domestic gasoline and diesel prices. Petitioners attached an analysis, dated October 2012, conducted by NERA Economic Consulting, titled "Economic Impacts Resulting from Implementation of RFS2 Program [sic]." The petition requests that EPA exercise its waiver authorities under section 211(o)(7) to reduce the required national volume of total renewable fuel and advanced biofuel to certain specified levels.

In a separate action that proposes the applicable RFS percentage standards for 2014, EPA is proposing to waive part of the 2014 statutory RFS volumes. Specifically, in the separate Federal Register Notice of Proposed Rulemaking for the 2014 standards, EPA is proposing to find that there is an inadequate domestic supply of renewable fuels in 2014 under section 211(o)(7)(A). EPA is also proposing to reduce the applicable volume of cellulosic biofuel under section 211(o)(7)(D). Based on these findings, EPA is proposing to reduce the applicable volumes of total renewable fuel and advanced biofuel. EPA is not, however, proposing to find

that implementation of the standards would severely harm the economy. In its separate proposal to establish the 2014 RFS volumes and percentage standards, EPA discusses in detail the legal, technical, and policy considerations that are the basis for its proposal.

EPA recognizes that there is significant overlap in the supporting data and issues raised in the petitions for a waiver and EPA's rulemaking to set the RFS percentage standards for 2014. Therefore, for the convenience of the parties and to avoid duplicative submissions by parties to both dockets, EPA will treat all comments and other information submitted to the docket for the 2014 RFS rulemaking (EPA-HQ-OAR-2013-0479) as also submitted to the docket for the petitions for a waiver (EPA-HQ-OAR-2013-0747). Therefore, parties will only need to submit additional comments or information to docket EPA-HQ-OAR-2013-0747 if those comments and information are intended solely for the petitions for a waiver and not for the rulemaking to set the 2014 RFS standards. EPA requests that such comments on the waiver petitions be submitted in the same time frame as comments on the rulemaking proposal. In light of the overlap in issues between the rulemaking proposal and petitions for waiver, EPA expects that our determination on the substance of the petitions for a partial waiver of the 2014 statutory volumes will be issued at the same time that EPA issues a final rule establishing the 2014 RFS standards.

EPA is issuing this notice to solicit comments and information on all of the issues raised in the petitions for a waiver.



Commenters should include data or specific examples in support of their comments in order to aid the Administrator in evaluating the requests for a waiver and determining what action if any is appropriate in light of all of the circumstances.

Dated: November 15, 2013.

Janet G. McCabe,  
Acting Assistant Administrator,  
Office of Air and Radiation.

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